BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LIBERTY UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2017090367 ORDER GRANTING DISTRICT'S MOTION TO QUASH SUBPOENA DUCES TECUM

PROCEDURAL BACKGROUND

Student filed a request for due process (complaint) with the Office of Administrative Hearings on September 11, 2017. Student alleged Liberty Union High School denied her a free appropriate public education dating back to 2009. Student desires to pierce the statute of limitations and extend the statute of limitation to 2009.

Good cause was established to continue this matter once on October 23, 2017. Student then requested leave to amend her complaint on November 8, 2017. This triggered a new scheduling order for the due process hearing.

On November 8, 2017, Liberty filed a motion to bifurcate the statute of limitations question. ALJ Rebecca Freie granted District's motion to bifurcate on November 16, 2017. In her prehearing conference order, ALJ Freie specifically directed petitioner to "articulate in her PHC statement what these specific [claims related to the statute of limitations question] claims are, and the witnesses and exhibits she intends to present to establish these claims."

On December 12, 2017, Student filed a motion to continue the bifurcated matter.

Student then filed a motion to compel production of documents from the District on December 14, 2017. Student again requested a continuance of the bifurcated matter. In Student's motion to compel, Student requested "all service logs, assessment plans, test protocols, complete IEPS, assessments and all IEP recordings from IEP's recorded." This motion was denied at the December 22, 2017 PHC.

On December 26, 2017, Student filed a Subpoena Duces Tecum requesting:

- "All special education information systems (SEIS), historical IEPS, current and affirm/attested forms and information, historical affirmed/attested

forms and information including all attachments, amendments and comments, SEIS Amendment, all signature pages
- IEP recordings
- Test protocols
- All emails relating to and referring to student
- All video and audio Surveillance of student and/or student's family, identify [sic] of investigators retained to investigate student or student's family. Invoices and payments to private investigator."

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities in Education Act (IDEA) has the right to present evidence and compel the attendance of witnesses in "a hearing conducted pursuant to subsection (f) or (k)" of section 1415 of title 20 of the United States Code. (20 U.S.C. § 1415(h); see also Ed. Code, § 56505, subd. (e).) California provides a similar right to present evidence and compel the attendance of witnesses in due process proceedings (Ed. Code, § 56505, subd. (e).) However, neither the IDEA nor the California Education Code confer a right to prehearing discovery in due process proceedings.

Education Code, section 56505, subdivision (a), provides that "[t]he state hearing shall be conducted in accordance with regulations adopted by the board," and under that authority the Department of Education promulgated section 3082, subdivision (c)(2), of title 5 of the California Code of Regulations, which authorizes the issuance of subpoenas and subpoenas duces tecum. These regulations specifically disallow the provisions of the Administrative Procedures Act that provide broader authority for the use of subpoenas in other administrative hearings (5 Cal. Code Regs., tit. 5, § 3089, [inapplicability of Govt. Code, §§ 11450.05-11450.30 to due process hearing procedures].) While subpoenas duces tecum are authorized in special education hearings, their use must be consistent with the legislative and regulatory framework of these proceedings, which accord prehearing access to only two types of documents: (i) parents have the right to request and receive the pupil's educational records within five business days at any time (Ed. Code § 56504), and (ii) the parties are entitled to receive copies of all the documents the parties intend to use at hearing, not less than five business days prior to the hearing (Ed. Code § 56505, subd. (e)(7)). Neither of these two circumstances envisions subpoenaing documents from a third party prior to a hearing.

Rather, in special education proceedings in California the hearing officer is given the right to issue subpoenas for personal appearances, and for the production of documents upon a showing of reasonable necessity by a party. (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).) This requirement mirrors that required by Code of Civil Procedure section 1985, subdivision (b) (Section 1985(b) [adopted into the Administrative Procedures Act at Gov. Code § 11450.20, subd. (a)], which requires:

> A copy of an affidavit shall be served with a subpoena duces tecum . . ., showing good cause for the production of the matters and things described in the subpoena, specifying the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the case, and stating that the witness has the desired matters or things in his or her possession or under his or her control.

The good cause requirement is met by a factual showing of why the requested documents or things are material and relevant to the litigated issues. (*Johnson v. Superior Court* (1968) 258 Cal. App.2d 829, 835-836; see also *Seven Up Bottling Company v. Superior Court* (1951) Cal. App.2d 71, 77.)

Special education law does not specifically address motions to quash subpoenas or subpoenas duces tecum. In ruling on such motions, the OAH relies by analogy on the relevant portions of Code of Civil Procedure, section 1987.1, which provides that a court may make an order quashing a subpoena entirely, modifying it, or directing compliance with it upon such terms or conditions as the court shall declare, including protective orders.

DISCUSSION

Student failed to demonstrate good cause existed for the requested documents. Student provided no factual showing of why the requested evidence was relevant to the litigated issue of extending the statute of limitations.

ORDER

1. District's motion to quash the subpoena duces tecum is granted.

IT IS SO ORDERED.

DATE: December 29, 2017

DocuSigned by:
Tiffany Gilmartin
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TIFFANY GILMARTIN
Administrative Law Judge
Office of Administrative Hearings